

1 THE HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 THE WATTLES COMPANY, a Washington corporation) Case No. 3:14-CV-05097-RBL
10 Plaintiff,) TIG INSURANCE COMPANY'S
11 v.) MOTION FOR PARTIAL SUMMARY
12 SCOTTSDALE INSURANCE COMPANY; et al.,) JUDGMENT DISMISSING POLICY
13 Defendants.) NO. T731343096
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16 **I. INTRODUCTION & RELIEF REQUESTED**

17 COMES NOW Defendant TIG Insurance Company ("TIG"), by and through its counsel
18 of record, Lane Powell PC, and hereby moves for partial Summary Judgment pursuant to Fed.
19 R. Civ. P. 56. All claims asserted by Plaintiff The Wattles Company ("Wattles") against TIG
20 under policy no. T731343096 must be dismissed with prejudice and without leave to amend
21 because the policy does not cover the real property at issue in this lawsuit.

22 **II. STATEMENT OF FACTS**

23 This is an insurance coverage dispute. Wattles owns real property located at 1901 –
24 2005 Fryar Avenue in Sumner, Washington (the "Sumner Property"). (Dkt. 3 at ¶ 1.) Between
25 1986 and 2012, Wattles allegedly purchased property insurance policies covering the Sumner
26 Property from each of the Insurer-Defendants. (*Id.*) Wattles alleges that, during this period,
27 the Sumner Property experienced damage and contamination related to the presence of acid and

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1 other chemicals used in a non-party tenant's operations at the Sumner Property. Wattles
 2 specifically alleges that the acid damaged wood framing members, concrete walls, and concrete
 3 floors. (*Id.* at ¶¶ 22-23.) Wattles further alleges that it submitted a Notice of Loss to the
 4 Insurer-Defendants, seeking coverage for the first-party property damage. At this time, the
 5 Insurer-Defendants have not accepted coverage for Wattles' insurance claim.

6 **A. TIG Issued Commercial Property Insurance Policies to Wattles.**

7 Between 1988 and 1994, TIG issued the following property insurance policies to
 8 Wattles:

- 9 • TIG policy number T730305511, effective from November 1 1988 to November 1,
 10 1989;
- 11 • TIG policy number T730797373, effective from November 1, 1989 to November 1,
 12 1990;
- 13 • TIG policy number T730812242, effective from November 1, 1990 to November 1,
 14 1991;
- 15 • TIG policy number T730812242, effective from November 1, 1991 to November 1,
 16 1992; and
- 17 • TIG policy number T731343096, effective from November 1, 1993 to November 1,
 18 1994.

19 (Dkt. 3 at ¶ 14.) The Building and Personal Property Coverage Form states that TIG "will pay
 20 for direct physical loss of or damage to Covered Property at the premises described in the
 21 Declarations caused by or resulting from any Covered Cause of Loss." (See Declaration of
 22 Jennifer K. Sheffield ("Sheffield Decl."), Ex. A at TIG 100375.) The coverage form defines
 23 "Covered Property" in relevant part as "Building, meaning the building or structure described
 24 in the Declarations". (*Id.*)

25 The declarations pages for the Commercial Property Coverage section of TIG policy
 26 number T731343096 list the following properties:
 27

- 1203 E. D Street, Tacoma, Washington
 Frame – Office
- 2367 Lincoln Avenue, Tacoma, Washington
 Masonry - Warehouse

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- 1 • 1920-1924-1926 Port of Tacoma Road, Tacoma, Washington
 2 Masonry – Paper Goods Mfg.

3 (See Sheffield Decl., Ex. A at TIG 100328-330.) Notably, the declarations pages do not list the
 4 Sumner Property. (*Id.*)

5 **B. Although TIG Policy No. T731343096 Does Not List The Sumner Property as a**
 6 **Covered Property, Wattles Refused to Dismiss its Claims Against the Policy.**

7 On January 17, 2014, in response to Wattles' Notice of Loss, TIG notified Wattles that
 8 TIG policy number T731343096 does not identify the Sumner Property or any property located
 9 in Sumner, Washington as a covered property. (Sheffield Decl., Ex. B at TIG 100499.) TIG
 10 informed Wattles that it was not entitled to coverage for the Sumner Property under policy
 11 number T731343096. (*Id.*)

12 After Wattles filed suit against the Insurer-Defendants, TIG asked Wattles to voluntarily
 13 dismiss its claims against TIG under policy number T731343096. (Sheffield Decl., Ex. C.)
 14 Again, TIG pointed out that the Sumner Property is not scheduled on the declarations pages for
 15 the Commercial Property Coverage section of policy number T731343096. (*Id.*) The Sumner
 16 Property was listed as a Covered Property under the Commercial Property Coverage section of
 17 the Westchester Surplus Lines Insurance Co. policy for the same policy period. (*Id.*; *see also*
 18 Dkt. 37 at 2.) TIG provided Wattles with a Stipulated Motion and Order of Dismissal for its
 19 approval without an award of costs to TIG. (Sheffield Decl., Ex. C.) Wattles did not respond
 20 to TIG's request for dismissal. (Sheffield Decl. at ¶ 6.)

21 **III. ISSUE STATEMENT**

22 Whether Wattles' claims against TIG under TIG policy no. T731343096 should be
 23 dismissed with prejudice and without leave to amend where the Sumner Property is not listed
 24 as a Covered Property.

25 **Answer: Yes.**

26 **IV. EVIDENCE RELIED UPON**

27 This motion relies upon the Declaration of Jennifer K. Sheffield and the exhibits
 28 attached thereto; and the pleadings and papers on file in this action.

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V. LEGAL ARGUMENT

A. Summary Judgment Standard.

On a motion for summary judgment under Federal Rule of Civil Procedure 56, the court must draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must initially show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The opposing party must then show a genuine issue of fact for trial. *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

B. Wattles Is Not Entitled to Coverage Under TIG Policy Number T731343096.

“Interpretation of an insurance contract is a question of law.” *Quadrant Corp. v. American States Ins. Co.*, 154 Wn.2d 165, 171, 110 P.3d 733 (2005). Washington courts “consider the policy as a whole, and we give it a ‘fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.’” *Id.* (quoting *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 666, 15 P.3d 115 (2000)). “Most importantly, if the policy language is clear and unambiguous, we must enforce it as written; we may not modify it or create ambiguity where none exists.” *Id.*

Based on the clear and unambiguous terms of TIG policy number T731343096 and the record before this Court, Wattles is not entitled to coverage for damage to the Sumner Property. TIG policy number T731343096 plainly states that TIG will provide coverage only for “direct physical loss of or damage to Covered Property at the premises described in the Declarations”. (Sheffield Decl., Ex. A at TIG 100375 (emphasis added).) “Covered Property” is defined in relevant part as “Building, meaning the building or structure described in the Declarations”. (*Id.*) Importantly, the declarations pages to TIG policy number T731343096 do not list the

1 Sumner Property. (*Id.*, Ex. A at TIG 100328-330.) Because the Sumner Property is not
2 scheduled on the declarations pages, Wattles is not entitled to coverage under TIG policy
3 number T731343096. Accordingly, Wattles' claims against TIG under policy number
4 T731343096 should be dismissed.

5 **VI. CONCLUSION**

6 For the foregoing reasons, TIG asks that the Court grant summary judgment and dismiss
7 Wattles' claims against TIG under policy number T731343096 with prejudice and without
8 leave to amend.

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10 DATED this 21st day of August, 2014.
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13 LANE POWELL PC
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15 By: /s/ Jennifer K. Sheffield

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CERTIFICATE OF SERVICE

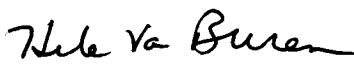
I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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19	DATED August 21, 2014.	
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